IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1327 OF 2004

Shri Ratnakar Sopan Patil ... Petitioner

v/s

Shri Dagdu T. Jadhav and ors. ... Respondents

Mr P.N. Joshi for Petitioner.

Mr I.R. Kulkarni for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 15TH JUNE 2005.

P.C. :-

1. By the impugned order, the executing court has found prima facie that the objectors who are respondents, are in possession of the property since before the institution of the suit and therefore, has stayed execution of the warrant of possession pending further inquiry. Perusal of the order shows that the executing court has recorded only a prima facie finding that the objectors are in possession. Obviously therefore, during the course of further inquiry, the Court will have to record a final finding whether the objectors establish that they came into possession of the property before the institution of the suit or after institution of the suit. The learned counsel appearing for the petitioners, relying on the applications that were earlier filed by the objectors, contended that the stand taken by the objectors is contradictory. There appears to be some substance that contradictory stand has been taken, but perusal of the order passed by the executing court shows that the executing court has relied on several documents to record a prima facie finding that the objectors were in possession since before the institution of the suit. Perusal of the order shows that the only stand in relation to those

documents that is taken by the petitioner is that those documents are forged and fabricated. Now, obviously this case has to be investigated. Therefore, I do not find any fault in the executing court recording a prima facie finding about possession on the basis of these documents. As observed above, as the order impugned in the petition is an interim order and inquiry for recording final finding is going on, it will not be appropriate for this Court to entertain this petition. Petition is rejected. Considering that the suit is filed in the year 1980, the executing court shall hold the inquiry as expeditiously as possible.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.